

SENATE MOTION

MADAM PRESIDENT:

I move that Engrossed House Bill 1175 be amended to read as follows:

- 1 Page 1, between the enacting clause and line 1, begin a new
- 2 paragraph and insert:
- 3 "SECTION 1. IC 34-30-2-149.4 IS ADDED TO THE INDIANA
- 4 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 5 [EFFECTIVE JULY 1, 2009]: **Sec. 149.4. IC 35-38-1-10.8(e)**
- 6 **(Concerning a mental health service provider who discloses**
- 7 **information in compliance with IC 35-38-1-10.8)."**
- 8 Page 1, after line 18, begin a new paragraph and insert:
- 9 "SECTION 3. IC 35-38-1-10.8 IS ADDED TO THE INDIANA
- 10 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 11 [EFFECTIVE JULY 1, 2009]: **Sec. 10.8. (a) The following definitions**
- 12 **apply throughout this section:**
- 13 (1) **"Bodily fluid" means blood, human waste, or any other**
- 14 **bodily fluid.**
- 15 (2) **"Dangerous disease" means any of the following:**
- 16 (1) **HIV.**
- 17 (2) **Gonorrhea.**
- 18 (3) **Hepatitis.**
- 19 (4) **Syphilis.**
- 20 (5) **Chancroid.**
- 21 (6) **Chlamydia.**
- 22 (7) **Lymphogranuloma venereum.**
- 23 (8) **Tuberculosis.**
- 24 (3) **"Offense involving the transmission of a bodily fluid"**
- 25 **means any offense (including a delinquent act that would be**
- 26 **a crime if committed by an adult) in which a bodily fluid is**
- 27 **transmitted from the defendant to the victim in connection**
- 28 **with the commission of the offense.**
- 29 (4) **"Potentially disease transmitting offense" means any of**
- 30 **the following:**
- 31 (A) **Rape (IC 35-42-4-1).**

1 (B) Deviate sexual conduct (IC 35-42-4-2).

2 (C) Child molesting involving intercourse or deviate sexual
3 conduct (IC 35-42-4-3(a)).

4 (D) Child seduction (IC 35-42-4-7).

5 (E) Sexual misconduct with a minor (IC 35-42-4-9).

6 (F) Incest (IC 35-46-1-3).

7 The term includes an attempt to commit an offense referred
8 to in clauses (A) through (F) and a delinquent act that would
9 be a crime referred to in clauses (A) through (F) if committed
10 by an adult.

11 (b) This subsection applies only to a defendant who has been
12 charged with a potentially disease transmitting offense. The
13 prosecuting attorney may petition a court to order a defendant
14 charged with the commission of a potentially disease transmitting
15 offense to submit to a screening test to determine whether the
16 defendant is infected with a dangerous disease. In the petition, the
17 prosecuting attorney must set forth information demonstrating
18 that the defendant has committed a potentially disease transmitting
19 offense. The court shall set the matter for hearing not later than
20 forty-eight (48) hours after the prosecuting attorney files a petition
21 under this subsection. The alleged victim of the potentially disease
22 transmitting offense with which the defendant is charged is entitled
23 to attend the hearing. If, following the hearing, the court finds
24 probable cause to believe that the defendant has committed a
25 potentially disease transmitting offense, the court may order the
26 defendant to submit to a screening test for one (1) or more
27 dangerous diseases.

28 (c) This subsection applies only to a defendant who has been
29 charged with an offense involving the transmission of a bodily
30 fluid. The prosecuting attorney may petition a court to order a
31 defendant charged with the commission of an offense involving the
32 transmission of a bodily fluid to submit to a screening test to
33 determine whether the defendant is infected with a dangerous
34 disease. In the petition, the prosecuting attorney must set forth
35 information demonstrating that:

36 (1) the defendant has committed an offense; and

37 (2) a bodily fluid was transmitted from the defendant to the
38 victim in connection with the commission of the offense.

39 The court shall set the matter for hearing not later than
40 forty-eight (48) hours after the prosecuting attorney files a petition
41 under this subsection. The alleged victim of the offense involving
42 the transmission of a bodily fluid with which the defendant is
43 charged is entitled to attend the hearing. If, following the hearing,
44 the court finds probable cause to believe that the defendant has
45 committed an offense and that a bodily fluid was transmitted from
46 the defendant to the alleged victim in connection with the
47 commission of the offense, the court may order the defendant to
48 submit to a screening test for one (1) or more dangerous diseases.

(d) The testimonial privileges applying to communication between a husband and wife and between a health care provider and the health care provider's patient are not sufficient grounds for not testifying or providing other information at a hearing conducted in accordance with this section.

(e) A mental health service provider (as defined in IC 34-6-2-80) who discloses information that must be disclosed to comply with this section is immune from civil and criminal liability under Indiana statutes that protect patient privacy and confidentiality.

(f) The results of a screening test conducted under this section shall be kept confidential if the defendant ordered to submit to the screening test under this section has not been convicted of the potentially disease transmitting offense or offense involving the transmission of a bodily fluid with which the defendant is charged. The results may not be made available to any person or public or private agency other than the following:

- (1) The defendant and the defendant's counsel.
- (2) The prosecuting attorney.
- (3) The department of correction.
- (4) The alleged victim and the alleged victim's counsel.

(g) An alleged victim may disclose the results of a screening test to which a defendant is ordered to submit under this section to an individual or organization to protect the health and safety of or to seek compensation for:

- (1) the alleged victim;
- (2) the alleged victim's sexual partner; or
- (3) the alleged victim's family.

(h) A person that knowingly or intentionally:

- (1) receives notification or disclosure of the results of a screening test under this section; and
 - (2) discloses the results of the screening test in violation of this section;
- commits a Class B misdemeanor."

Page 2, after line 29, begin a new paragraph and insert:

"SECTION 6. IC 35-38-1-10.7 IS REPEALED [EFFECTIVE JULY 1, 2009].

1 SECTION 7. [EFFECTIVE JULY 1, 2009] **IC 35-38-1-10.8, as**
2 **added by this act, applies only to crimes committed after June 30,**
3 **2009."**

4 Renumber all SECTIONS consecutively.
 (Reference is to EHB 1175 as printed March 27, 2009.)

Senator BRAY